

MOTION FILED
OCT 17 1983

No. 83-650

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

LEE MEYERSON,

Petitioner,

v.

THE STATE OF ARIZONA, ARIZONA BOARD OF
REGENTS, RALPH M. BILBY, RUDY E.
CAMPBELL, ESTHER N. CAPIN, EARL H.
CARROLL, THOMAS CHANDLER, WILLIAM G.
PAYNE, WILLIAM P. REILLY, TIO A.
TACHIAS, RENEE MARLER, JOHN SCHWADA,
PAIGE E. MULHOLLAN, KARL H.
DANNENFELDT, JOYCE POSTER, GUIDO
WEIGAND, AUSTIN JONES, LEONARD D.
GOODSTEIN, PETER KILLEEN, JOHN DOES
I thru V, and JANE DOES I thru V,

Respondents.

PETITIONER'S MOTION TO CONSOLIDATE PETITION FOR
CERTIORARI WITH THIS COURT'S DETERMINATION
IN LeSTRANGE v. CONSOLIDATED RAIL CORP., No. 82-862

CHARLES D. ROUSH, Counsel of Record
TREON, WARNICKE & ROUSH, P.A.
919 North First Street
Phoenix, Arizona 85004
(602) 257-0747
Attorneys for Petitioner

Petitioner, Professor Lee Meyerson (Meyerson), is filing a petition for certiorari with this Court in the matter captioned Meyerson v. State of Arizona, et al.. Meyerson is aware that several of the issues presented in his petition are also presented to this Court in LeStrange v. Consolidated Rail Corp., No. 82-862 (certiorari granted). Petitioner understands that the LeStrange case will be argued to this Court in October, 1983.

Specifically, the issues presented in LeStrange are:

1. Whether a handicapped applicant for employment may maintain an employment discrimination action under Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, where the primary objective of the employer's Federal financial assistance is unrelated to employment?
2. Whether a handicapped applicant for employment who cannot demonstrate a nexus between the denial of employment and a specific program supported by Federal financial assistance may nevertheless maintain an employment discrimination action under Section 504 of the Rehabilitation Act?
3. Whether a private right of action exists under Section 504 of the Rehabilitation Act?¹

In Meyerson's petition the issues presented are:

I.A. Whether An Otherwise Qualified Handicapped Person Has Standing To Maintain An Employment Discrimination Action Under 29 U.S.C. § 794 Even If A Primary Purpose Of The Federal Financial Assistance Received By The Discriminating Entity Is Not Employment.

1. Whether this Court should consolidate its decision on this petition with its consideration of the LeStrange v. Consolidated Rail Corp. case scheduled for hearing in the October, 1983, term.
2. Assuming that standing under 29 U.S.C. § 794 requires a showing that a primary purpose of the federal assistance is to provide employment, whether an otherwise qualified handicapped college professor may bring a private action for employment discrimination where the federal assistance in question was grants used to support professors in research projects.

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¹ Quoted from the petition of Consolidated Rail Corp. in LeStrange.

- B. Whether An Otherwise Qualified Handicapped Professor Teaching At A University Which Receives Millions Of Dollars Annually In Federal Financial Assistance Has Standing Under 29 U.S.C. § 794 to Maintain An Employment Discrimination Action Without Respect To Which Particular Administrative Segments Of The University Make Use Of The Assistance.
- II. Whether A Private Right Of Action Exists Under 29 U.S.C. § 793.
- III. Whether A Handicapped Person Has A Private Right Of Action Under 29 U.S.C. § 793 Pursuant To 42 U.S.C. § 1983.

Thus, Meyerson's issues I.A. and I.B. are nearly identical to issues 1 and 2 presented in the LeStrange case.

Meyerson respectfully suggests that this Court may wish to hold its decision on his petition until this Court has heard and decided the LeStrange case. Doing so may result in benefits to this Court because, if this Court decides the issues of LeStrange in a way favorable to Meyerson's position, then this Court might be able to dispose of issues I.A. and I.B. of Meyerson's petition in summary fashion pursuant to Rule 23.1.²

There is another compelling reason for this Court to postpone its decision on Meyerson's petition: if this Court denied Meyerson's petition and subsequently decided the LeStrange case favorably to Meyerson's position, then Meyerson's claims in issues I.A. and I.B. will have been foreclosed even though Meyerson's case arose after the LeStrange case.

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² Subpart 2 of Meyerson's issue I.A. is an alternative ground on which this Court may rule in Meyerson's favor despite an unfavorable ruling in LeStrange.

Accordingly, Meyerson respectfully suggests that this Court hold in obedience its decision on Meyerson's petition pending its hearing and determination of the LeStrange matter.

RESPECTFULLY SUBMITTED this 13th day of April, 1983.

TREON, WARNICKE & ROUSH, P.A.

By



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AFFIDAVIT OF SERVICE

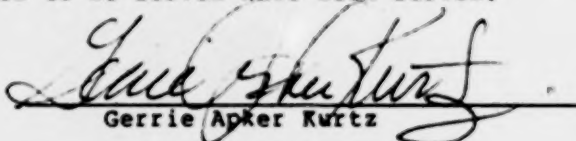
STATE OF ARIZONA)
) ss.
County of Maricopa)

I, Gerrie Apker Kurtz, depose and say I am an attorney in the office of counsel of record for Lee Meyerson, petitioner in a petition for certiorari being filed in the case Meyerson v. State of Arizona. On October 14th, 1983, I served three copies of this motion on Stephen K. Smith, counsel for all the parties who will be respondents in this matter. I mailed said copies to Stephen K. Smith at the following address:

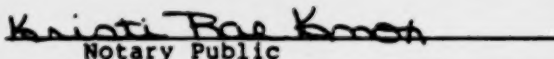
Stephen K. Smith
ARIZONA BOARD OF REGENTS
1535 West Jefferson
Room Number 121
Phoenix, Arizona 85007

by placing said copies in the United States mail in Phoenix, Arizona, postage prepaid.

All parties required to be served have been served.


Gerrie Apker Kurtz

SUBSCRIBED AND SWORN to before me on October 14, 1983.


Notary Public

My Commission Expires:

March 8, 1986